Served a Demand Letter by the Bank? Five Things to Know

Date: November 21, 2016
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If you are served with a demand letter from your lender, you don't have to fold up your tent and give in. If, like most companies, you feel that if you had more time, you could improve the situation (to the benefit of the Bank and the company), there are options. Here are 5 things that you can consider which will make it more likely that the Bank will either agree, or be forced to agree, to give you some more time to come up with a better solution.

1. **It's Not Over until it's Over**: There are remedies under the Bankruptcy and Insolvency Act and other insolvency statutes that can be used to stop a Bank from continuing with its enforcement and provide you with breathing space to consider your options. In particular, if you file of a Notice of Intention to Make a Proposal before the notice period in the Bank's demand letter expires, the Bank's enforcement against you is automatically put on hold. However, this remedy does not last for long if you don't really have a plan in mind to save the business. If you want the law to hold the Bank at bay, you need to act as soon as possible and show you have a better plan in mind than what the Bank wants.

2. **There are Other Fish in the Sea**: In the current lending environment, it seems there is almost always someone else you can Bank with, if you have a little more time to find them. The rates and fees offered by second tier lenders will not be as good as the major Banks, but it will still be better than handing the keys of your business over to your current Bank. Indeed, the Banker's main goal in serving you with a demand letter may be to get you to find someone new to work with. If you make progress with another lender (especially if you secure a commitment letter or some other documentary evidence of take-out financing), even after your Bank makes demand on you, your Bank will often give you some more time. Banks don't like spending money on enforcement if they don't absolutely have to.

3. **Papers Please**: Surprisingly, a Bank's security and lending paperwork is often quite disorganized and incomplete. It is useful to ask the Bank acting against you to produce evidence of the security and lending arrangements their demand letter is based on. If there are problems with their paperwork, your leverage increases. Until you see the

paperwork, don't provide any free admissions about the state of the agreements in place among the parties. Even if there is no problem with the paperwork, reviewing may remind you of some of your obligations and previous promises made to the Bank, which may impact your next move.

4. **No Funny Business**: There is only one genuine red flag which will reliably result in Bankers going immediately into enforcement mode: the belief that assets or their funds have gone or are about to go out the back door. When the Banker has made demand because they see reports are missing or feel you are not communicating with them when asked, it is really often this concern they are most worried about. Assuming you are not purposefully depleting the Bank's collateral or misusing funds (and if you are, please call someone else!) you need to be ready to answer these concerns proactively before the Banker can get it into their mind that you are a shady character. On the other hand, if you can establish goodwill right off the bat with openness or a report prepared by your accountant or financial advisor addressing their concerns, things can progress in your favour and the crisis can be dispelled.

5. **Everybody Wants Something**: The Bankers are humans too. They have needs and targets and concerns. Knowing their personal motivation and targets can help you get them to agree with you. For example, if you offer to agree to a forbearance agreement, what the Banker may see is that is an opportunity for them to charge fees, and an opportunity for them to recover some fees they may have already spent. Those are criteria upon which they are assessed at year end when bonuses are rewarded. It is also for this reason that Bankers don't want to start an enforcement process, especially where the recovery of their costs is uncertain. No Banker wants to have a large legal bill with little recovery to explain to their boss. Indeed, in some cases, if you can make the enforcement look very expensive and uncertain, the Banker may be more willing to allow you more time to try to fix the problem yourself.

The bottom line is, the arrival of a demand letter on your doorstep is never good news, but it does not have to be the end of the line. Retaining capable counsel who are familiar with Bankers and how they think, may result in you having more time and or options than either you or the Banker thought you had.